

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of  
Ogdensburg, New York,

Debtor.

Case No. 23-60507 (PGR)

Chapter 11

**APPLICATION FOR ENTRY OF AN ORDER REDUCING TIME  
FOR NOTICE OF MOTION FOR ENTRY OF STIPULATION AND  
AGREED ORDER MODIFYING THE AUTOMATIC STAY**

The Roman Catholic Diocese of Ogdensburg, New York (the “Diocese”), by and through its undersigned counsel, makes this application (the “Application”), respectfully requesting that the Court schedule a hearing to consider approval of the relief requested in the Motion for Entry of Stipulation and Agreed Order Modifying the Automatic Stay (the “Motion”),<sup>1</sup> for November 7, 2023 at 1:00 p.m. (prevailing Eastern Time), or as soon thereafter as counsel may appear and be heard, before the Honorable Patrick G. Radel, United States Bankruptcy Judge for the Northern District of New York, or such other judge as may be sitting in his stead in the United States Bankruptcy Court for the Northern District of New York, Alexander Pirnie U.S. Courthouse and Federal Building, 10 Broad Street, Utica, New York 13501.

**BACKGROUND**

1. On July 17, 2023, the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”).

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<sup>1</sup> Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Motion.

2. The Diocese is a residual beneficiary of the Calligaris Family Charitable Trust (the “Trust”).

3. On February 15, 2023, Manufacturers and Traders Trust Company (the “Petitioner”), acting in its capacity as co-trustee of the Trust, filed a petition for advice and direction in the State of New York Surrogate Court, Erie County (the “State Court”) [Index No. 2023-739] (the “State Court Action”) together with an application for an order to show cause as to why an order should not enter: (a) determining that Virginia T. Calligaris is unwilling or unable to serve as a successor co-trustee with Petitioner with respect to the Trust, (b) determining that Alfred P. Calligaris and Christian E. Calligaris are unfit to serve as alternate successor co-trustees of the Trust, and (c) determining that Petitioner should serve as sole trustee of the Trust or, in the alternative, (d) permitting Petitioner and/or the State Court to conduct discovery on the question of the alternate successor co-trustee’s fitness to serve.

4. As set forth above, because the Diocese is a residual beneficiary of the Trust, and as such, was made a party to the State Court Action.

5. Section 362 of the Bankruptcy Code automatically stays, among other things, the commencement or continuation of a judicial, administrative, or other action or proceeding against the Diocese that was or could have been commenced before the commencement of the Chapter 11 Case, as well as any act to obtain possession of property of the Diocese’s bankruptcy estate or of property from the estate or to exercise control over property of the estate.

6. Accordingly, as recognized by the Second Circuit’s controlling decision in *Bayview Loan Servicing LLC v. Fogarty (In re Fogarty)*, 39 F.4th 62 (2d Cir. 2022), the State Court Action is presently stayed.

7. The Diocese does not oppose the relief sought by Petitioner in the State Court Action and has agreed to a limited modification of the automatic stay, as set forth in the Motion, to allow the State Court Action to proceed.

### **APPLICATION**

8. On October 25, 2023, the Diocese filed the Motion seeking entry of the proposed Stipulation and Order modifying the automatic stay to allow the State Court to adjudicate the State Court Action.

9. The Diocese makes this Application pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure and Local Rule 9013-5 for entry of an order reducing the time for the notice of hearing to consider the relief requested in the Motion.

10. Local Rule 9013-1(e) requires that motions be served 21 days prior to the hearing date, and Bankruptcy Rule 9006(c)(1) further provides that “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.”

11. The Court’s next available motion calendar date that the Motion could be heard without shortening the 21-day notice period is December 5, 2023. However, the Petitioner, as co-trustee of the Trust, is required to make one or more Trust distributions on before November 30, 2023, in order to avoid adverse tax consequences for the Trust. Since the State Court Action is presently stayed, this cannot occur.

12. The Diocese respectfully submits that setting a hearing on the Motion for Tuesday, November 7, 2023 would allow for a sufficient notice period under the circumstances.

Dated: October 24, 2023

SCHWERZMANN & WISE, P.C.

By: 

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Diocese of Ogdensburg, New York*

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the period required for service of notice of the Motion and scheduling the hearing to consider the Motion on an expedited basis; and it appearing that the relief requested in the Motion is in the best interests of the Diocese's estate, creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The hearing to consider the Motion shall be held November 7, 2023 at 1:00 p.m. (prevailing Eastern Time), or as soon thereafter as counsel may appear and be heard, before the Honorable Patrick G. Radel, United States Bankruptcy Judge for the Northern District of New York, in the Alexander Pirnie U.S. Courthouse and Federal Building, 10 Broad Street, Utica, New York 13501.

2. All affidavits and memoranda in opposition to the relief requested in the Motion, if any, shall be in writing and shall be filed with the Clerk's Office, United States Bankruptcy Court for the Northern District of New York, Utica Division, and served upon counsel for the Diocese, no later than 5:00 p.m. on November 3, 2023.

3. Service of copies of this Order and notice of the Motion shall be deemed good and sufficient if transmitted by 5:00 p.m. on October October 6, 2023 by ECF notice, email, and overnight delivery upon: (i) counsel to the Diocese, Schwerzmann & Wise, P.C., 220 Sterling Street, Watertown, NY 13601, Attn: Keith B. Caughlin, (ii) the Office of the United States Trustee for the Northern District of New York, 10 Broad Street, Room 105, Utica, NY 13501, Attn: Erin Champion, (iii) proposed counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10017, Attn: Ilan D. Scharf, and (iv) those persons who have formally appeared and requested service in this case

pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the requested relief, no other or further notice or service of the Motion shall be necessary or required.

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